the master-eye to the magnifying glass. The plaintiff, however, is no less able today to perform with the aid of one eye all the tasks he had been doing before the accident.

$12,500 should buy the plaintiff at least 5 acres of good paddy-lands, bringing him a steady income for life. I do not think that very many farmers in this country own individually that much land to support a whole family. Should this youth be improvident when he attains the age of majority and claims his money from the Public Trustee, I doubt whether twice $12,500 would do him any good. In endeavouring to hold an even balance between plaintiff and defendant, I do not feel that I had been parsimonious with other people's moneys, even though I had no intention of being lavish in dipping into their purse. The $12,500 was intended to cover also a degree of pain from all injuries sustained in the same accident, the future discomfort and cosmetic deformity, which I did not leave out of account.

I assessed the items of special damage as best I could on the evidence.

Since this judgment was written I have read in the *Times* Law Report of June 30, 1965, that a workman, aged 53, employed by British Railways, was awarded £2,250 agreed general damages for the loss of his left eye: (*Dimmock* v. *British Railways Board* (2)). Considering the higher cost of living in England, and the different economic conditions prevailing in the two countries, it seems to me that £1,500, or two-thirds of the English award, is not an unreasonable sum to compensate the plaintiff for the unfortunate accident.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

RE DING DO CA, DECD. NGOI SUI ING & ORS. v. WONG SWEE KIEW & ORS.

[O.C.J. (Ali J.) July 14, 1965]

[Ipoh — Perak Civil Suit No. 158 of 1962]

Marriage — Intestate contracting Christian monogamous marriage — Conversion to Buddhism — Subsequent polygamous marriage according to Chinese custom during subsistence of first marriage — Whether second marriage valid — Status.

The deceased went through a Christian marriage with the 1st defendant in 1923 and a second marriage with the 1st plaintiff according to Chinese custom in 1937. The deceased died sometime in 1949 intestate and there was evidence that sometime before he went through the second marriage, he had embraced Buddhism. In this action the plaintiffs sought declarations that they were entitled to share in the estate of the deceased as beneficiaries. The questions for the determination of the court were whether: (1) the subsistence of a Christian monogamous marriage would operate to prevent the deceased from entering into a subsequent valid marriage, and (2) the deceased, who was a Christian during his life time could validly enter into a polygamous marriage.

Held: (1) the subsistence of a Christian monogamous marriage would not constitute a bar to the deceased from subsequently contracting a marriage which would be valid by his personal law;

(2) the evidence that the deceased had embraced Buddhism some time before he went through the second marriage removed any obstacle there might be in coming to the conclusion that the 1st plaintiff and her children were the lawful widow and children of the deceased.

Cases referred to:—

(1) *Re Loh Toh Met, decd.*, [1961] M.L.J. 234.

(2) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257 at p. 263.

CIVIL SUIT.

E. K. Yeap for the plaintiff.

P. P. Dharmananda for the defendants.

Ali J.: The plaintiffs in this action are seeking declarations that they are entitled to the beneficial shares in the estate of Ding Do Ca, deceased, who died intestate some time in March, 1949. Letters of administration were granted to the 1st defendant, as the lawful widow of the deceased, and the beneficiaries disclosed in the petition for administration were the 2nd and the 3rd defendants as lawful children. The estate of the deceased consists mainly of immovable property which, as far as I am aware, had not been distributed at the date of the trial.

Although in their pleadings the plaintiffs claim several reliefs, in my opinion those which are of primary importance are for declarations as to the status of each of the plaintiffs in relation to the deceased's estate. It is part of the plaintiffs' case that the deceased left not one but two widows surviving him and, therefore, by reason of the provisions of sub-section (2) of section 6 of the Distribution Ordinance, 1958, the two widows and all the children by the two marriages are entitled to their distributive shares of the estate. The defence pleadings, however, merely concerned with the refusal to recognise the plaintiffs as lawful beneficiaries of the deceased. In the event, there was some controversy as to what were the real issues for determination. The evidence of the parties at the hearing was merely confined to the proof that the 1st plaintiff or the 1st defendant, as the case may be, had gone through a marriage ceremony with the deceased intestate. For the purpose of the present proceedings, it is sufficient if I say that I accept the evidence of both parties as showing that the deceased intestate did go through a Christian marriage with the 1st defendant on the 28th August, 1923, and in 1937 again went through another form of marriage with the 1st plaintiff according to Chinese custom. I do so accept despite the defence

denial that the 1st plaintiff had been accepted by members of the deceased's family as the secondary wife or "t'sip".

The case for the plaintiffs is that the second marriage was a marriage which is recognised by the law of this country and, therefore, confers on the 1st plaintiff and her children the status of lawful widow and children of the deceased intestate and that, therefore, they are entitled to the beneficial shares of the estate of the deceased intestate. For the defence, the contention was that the second marriage was not a kind of marriage which is recognised by the law of this country because the first marriage was a monogamous marriage. To put it in another way, the defence contention is that the subsistence of a monogamous marriage prevented the deceased from contracting a subsequent valid marriage so that if he, in fact, did go through such subsequent marriage, then such subsequent marriage was void. So far as the present proceedings are concerned only with the matter relating to entitlement to shares in an estate and not to matters relating to the commission of a criminal offence, it seems to me that the view of the law of this country on the question raised by the defence is far from being settled. The authorities cited do not seem to apply to the circumstances of this case and whatever the views expressed in those cases which seem applicable can only be *obiter*. Turning to the matter in dispute, the defence contention appears to have given rise to two questions. One which I have already stated, is whether the subsistence of a monogamous marriage would operate to prevent the deceased intestate from entering into a subsequent valid marriage. It does not appear to me that at the time of the second marriage there was in force any statute which expressly, or by necessary implication, would have the effect of preventing the deceased intestate from contracting a subsequent valid marriage. Nor am I aware of any binding decisions of the courts of this country which can be said to have that effect. Therefore, on this first question, I am compelled to the view that the subsistence of a Christian monogamous marriage would not constitute a bar to the deceased intestate from subsequently contracting a marriage which would be valid by his personal law. The second question which arises from the defence contention is whether the deceased intestate, who was a Christrian during his life time could validly enter into a polygamous marriage. This question was discussed in the case of *Re Loh Toh Met, decd.*[1] but the decision thence seems to have been based on the finding by the Court of Appeal that the deceased was not a Christian at the time of any of the marriages. In this way, that case could not be of much assistance to the determination of this question before me.

But in the case of *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi*,[2] at page 263, Thomson J. (as he then was) who, incidentally, presided in the appeal of *Re Loh Toh Met, decd., supra,* stated:—

> "In the Straits Settlements, however, whatever may be the position as regards other races, the only conclusion that can be drawn from the *Six Widows* Case *supra*, which is the classical case on the subject, is that as regards Chinese the question of personal law is based on race. The courts in effect have given judicial recognition to certain customs prevalent or thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. (The underlining is mine. They have thus set up what might be called a sort of common law as affecting persons of Chinese race and it would seem that the case is the same in those portions of the present Federation which were not formerly part of the Straits Settlements or, perhaps more accurately, which were part of the former Federated Malay States."

Hill J.A. sitting at the appeal in *Re Loh Toh Met, decd., supra,* referring to this said:—

> "It is a natural corollary of this statement that a Christian Chinese may legally contract a polygamous marriage if to do so is consistent with his personal law based on race."

Indeed, it is, I think, fair to say that the law is far from being settled on this question. But this need not present much difficulty in this case for I accept the evidence that some time before he went through the second marriage with the 1st plaintiff the deceased intestate had embraced Buddhism. This removes any obstacle there might be in coming to the conclusion that the 1st plaintiff and her children are the lawful widow and children of the deceased intestate.

Accordingly there will be judgment for the plaintiffs in terms of the prayers set out in the statement of claim and costs.

Judgment for the plaintiffs.

Solicitors: *Yeap & Yeap; Dharmananda & Co.*

LOH TECK CHONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong F.J.) August 17, 1965]

[K.L. — Criminal Appeal No. 26 of 1965]

Gaming — Betting — Rebuttable presumption — Expert evidence.

Betting Ordinance, 1953, ss. 6(3), 8(1) and 14A — Rebuttable presumption — Evidence of police officer who is not an expert — Duty of court.

The appellant was convicted for an offence under section 6(3)(a) of the Betting Ordinance, 1953. A racing programme was found in the possession of the appellant and a police inspector gave evidence under section 14A of the Betting Ordinance regarding this programme.

Held: (1) the legal presumption raised by section 14A of the Betting Ordinance, 1953, is a rebuttable presumption and does not in any manner shut out closer scrutiny and evaluation of the evidence;

(2) there was no reason why the explanation of the appellant as regards the marks on the racing programme